

AMENDING STATUTES RELATING TO PATENTS.

MARCH 25, 1896.—Referred to the House Calendar and ordered to be printed.

Mr. DRAPER, from the Committee on Patents, submitted the following

REPORT:

[To accompany H. R. 3014.]

The Committee on Patents, to whom was referred House bill 3014, have had the same under consideration and report as follows:

This is a bill prepared by a special committee of the American Bar Association on amendment of the patent law, whose report was accepted and indorsed by the entire association.

Coming before the committee and the House as the result of the study of the ablest lawyers of the country who have had to deal with all the questions under the patent law that come before the courts, your committee have felt that their recommendation was entitled to great weight, and have been naturally inclined to report the bill without amendment. They have, however, further sought the advice of the Commissioner of Patents and of some of the most eminent judges on the bench, who concur in the opinion that the changes recommended are wise.

In one point only have the committee ventured to amend the changes proposed by the eminent gentlemen responsible for the bill. There is a strong feeling in the community that undue delays in the Patent Office, which have sometimes taken place, are against public policy, and your committee have endeavored to make the amendment proposed by the bar association to meet this state of things even more stringent.

To this end they recommend an amendment to this bill as follows: That section 4, line 5, on page 5, be amended by the insertion after the word "months" of the following:

And by adding at the end of the paragraph the following: "And upon failure to complete the case for final action within eighteen months after the filing of the application, the Commissioner of Patents may require the applicant to show cause why final action should not be taken thereon; and if upon such hearing the Commissioner determines that the application has not been prosecuted with reasonable diligence, he shall make an order requiring the applicant to complete his case for final action within six months thereafter, and upon the expiration of said six months final action shall be taken thereon. In cases where interference has been declared, three years' additional time may be allowed for the prosecution of the interference, which time may be extended by the Commissioner of Patents upon its being shown to his satisfaction that due diligence has been shown in prosecution of such action."

And by adding, in line 14 of the same section, after the word "unavoidable," the same language, as follows:

And upon failure to complete the case for final action within eighteen months after the filing of the application, the Commissioner of Patents may require the applicant to show cause why final action should not be taken thereon; and if upon such hearing the Commissioner determines that the application has not been prosecuted with reasonable diligence, he shall make an order requiring the applicant to complete his case for final action within six months thereafter, and upon the expiration of said six months final action shall be taken thereon. In cases where interference has been declared, three years' additional time may be allowed for the prosecution of the interference, which time may be extended by the Commissioner of Patents

upon its being shown to his satisfaction that due diligence has been shown in prosecution of such action.

The amendments proposed in this bill are none of them of a radical character, and are needed, in the judgment of the committee, to harmonize the statutes, in view of court decisions, and to meet certain abuses that have grown up under the present law.

The first amendment to section 4886 provides that the patenting or publication of an invention in any foreign country, if more than two years prior to the application in this country, shall be a bar to a patent. As the law now stands, an invention may be published and patented abroad, and years after be patented to the foreign inventor in this country. The same reasons that compel the applicant for a patent under the present law to apply within two years after the invention has gone into public use in this country make it reasonable that he should apply for his patent within two years after it has been patented or published abroad.

The amendment to section 4920 is to make that section harmonize with section 4886 as amended.

The amendment to section 4887 is made desirable by recent decision of the Supreme Court, which limits the term of a United States patent to that of a foreign patent, if a foreign patent is taken out on the same invention and issues before the patent in the United States. It is proposed as an amendment that the granting of a foreign patent to the same inventor or his assigns shall not affect the term of the United States patent unless the application for said foreign patent was filed more than seven months prior to the filing of the application in this country, in which case no patent shall be granted here. A similar provision exists in the laws or treaties of most European countries, and this provision, it is believed, will accomplish the object which the legislators had in view in framing the present law, and will obviate all of its present inconveniences. This section as amended will not apply to any patent in this country granted prior to the passage of this act, nor to any applications for a patent in this country then pending, or to any patent granted on such a pending application.

The amendment provided in section 4 to section 4894 is for the purpose of preventing delays in the Patent Office. The bill provides that the term of two years within which the applicant must complete and prepare for examination the filing of his application, and also the same term within which he must prosecute the same for action thereon, shall be reduced to six months. The committee believe that this shortening of time for delay is proper, and have gone further in the same direction in the amendment to the bill which they have recommended.

Section 5 of the bill is a matter of detail, and provides that a certificate of acknowledgment of assignment of patents before a proper officer shall be prima facie evidence of execution.

Section 6 provides a statute of limitation in patent cases. Under the decisions of the Supreme Court, the State statutes of limitation apply to actions for infringement of patents brought upon the law side of the court. It seems to your committee desirable that there should be a uniform statute of limitations, and they therefore adopt the recommendation of the committee of the Bar Association.

It is believed, as before stated, that these amendments will simplify and improve the patent law, and they are unanimous in recommending the passage of the bill, with the exception of the last section in regard to the statute of limitations, in regard to which a minority of the committee reserve the right to dissent.

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